

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLIE B. BUSH JR.,)	4:16CV3136
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
MAPES, INC.,)	
)	
Defendant.)	
)	

On September 12, 2016, the court entered an order on initial review of this pro se case in which the plaintiff, Charlie B. Bush, Jr. (“Plaintiff”), was directed to file an amended complaint (1) attaching the Charge of Discrimination he filed with the NEOC to show that his administrative remedies were exhausted and (2) alleging sufficient facts to support his claims of (a) a hostile work environment, (b) disparate treatment with respect to his termination, and (c) retaliation. (Filing No. [6](#)) Plaintiff filed an Amended Complaint on October 12, 2016. (Filing No. [7](#)) The Amended Complaint will be considered as supplemental to, rather than as superseding, the original Complaint. (Filing No. [1](#)) See [NECivR 15.1](#).

The Charge of Discrimination Plaintiff filed with the NEOC on October 23, 2016, is attached to the Amended Complaint, and it establishes that all of the claims alleged by Plaintiff in this action have been administratively exhausted. However, Plaintiff has failed to allege any additional facts to support his claims. The Amended Complaint differs slightly in form from the original Complaint, but in substance it is nearly identical. For the reasons discussed in the court’s previous Memorandum and Order, the three claims identified above are not adequately pleaded and cannot be maintained. See [28 U.S.C. § 1915\(e\)\(2\)](#).

The court previously determined for purposes of initial review that the original Complaint contained sufficient facts to state an actionable race-based disparate treatment claim with respect to a one-day suspension in January 2015, provided that

Plaintiff's administrative remedies were exhausted. If Plaintiff wants to litigate that claim—but none of his other claims—he may do so. Defendant, however, will not be precluded from asserting that Plaintiff's pleadings fail to state a claim upon which relief can be granted.

IT IS THEREFORE ORDERED:

1. Plaintiff's claim that he received a one-day suspension because of his race may proceed to service of process. Upon being served, Defendant will be required to respond only to that claim.

2. To obtain service of process on Defendant, Plaintiff must complete and return the summons form which the Clerk of the Court will provide. The Clerk of the Court shall send ONE (1) Summons form and ONE (1) USM-285 form to Plaintiff together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the Court. In the absence of the forms, service of process cannot occur.

3. Upon receipt of the completed forms, the Clerk of the Court will sign the Summons form, to be forwarded with a copy of the Complaint and the Amended Complaint to the U.S. Marshal for service of process. The Marshal shall serve the Summons, Complaint, and Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to [Federal Rule of Civil Procedure 4](#) and Nebraska law in the discretion of the Marshal. The Clerk of the court will copy the Complaint and Amended Complaint, and Plaintiff does not need to do so.

4. [Federal Rule of Civil Procedure 4](#) requires service of a complaint on a defendant within 90 days of filing the complaint. However, because in this order Plaintiff is informed for the first time of these requirements, Plaintiff is granted, on the court's own motion, an extension of time until 90 days from the date of this order to complete service of process.

5. Plaintiff is hereby notified that failure to obtain service of process on Defendant within 90 days of the date of this order may result in dismissal of this matter without further notice. A defendant has twenty-one (21) days after receipt of the summons to answer or otherwise respond to a complaint.

6. The Clerk of the Court is directed to set a pro se case management deadline in this case with the following text: "January 18, 2017: Check for completion of service of summons."

7. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. Plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

Dated this 20th day of October, 2016.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge